

Ex. 1

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VIDEOTAPED DEPOSITION OF

MICHAEL BRANT-ZAWADZKI, M.D.

Los Angeles, California

Tuesday, August 16, 2011

Reported By:

LISA MOSKOWITZ, CSR 10816, RPR, CLR

Job No. 41126

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1 there is some specific language of how to 10:56
2 select a nerve. And you take the structure.
3 You do an averaging. And I think it's in the
4 portion of the patent where there's the --
5 where it talks about fascicles and 10:56
6 cross-sections and how to do it.

7 So there is some specific language in
8 how to do that, yes.

9 MR. LoCASCIO: Let's take a break.

10 THE VIDEOGRAPHER: The time is 10:56
11 10:56 a.m., and we are off the record.
12 (Recess taken from 10:56 a.m. to
13 11:03 a.m.)

14 THE VIDEOGRAPHER: The time is
15 11:03 a.m., and we're back on the 11:03
16 record.

17 BY MR. LoCASCIO:

18 Q. I'm going to hand you what's
19 previously been marked as Defendants'
20 Exhibit 11. It's the 360 patent. 11:03

21 Sir, I take it you've seen Exhibit 11
22 before?

23 A. Yes.

24 Q. We were just talking about whether
25 and where the 360 patent defines how to select 11:03

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1 a region of interest to make a conspicuity 11:03
2 determination. And your recollection was there
3 was something in the patent telling you how to
4 do it. Can you identify that for me?

5 A. Yes. So the section that I think I 11:04
6 was referring to related to the discussion of
7 fascicles. So that was what I remember. There
8 was at least some degree -- I wish I could do a
9 word search for "fascicles." You guys don't
10 have that on a computer, do you? 11:06

11 Q. I don't.

12 A. Here it is. By way of
13 illustration -- so it's 27 going on to 28,
14 column 28.

15 Q. Okay. 11:08

16 A. So there's some descriptions here of
17 how to identify -- a thresholding process is
18 used, it says, to identify relatively bright
19 regions of the image potentially representative
20 of a nerve. 11:08

21 Q. That's second line of column 28?

22 A. That's the first sentence, full
23 sentence of column 28, second line, correct.
24 It goes on from there.

25 Q. And is that, in your view, discussing 11:08

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1 the types of thresholding processes we talked 11:08
2 about earlier?

3 MR. FENSTER: Objection. Vague.

4 THE WITNESS: The broad range, yes.

5 I believe that addresses the broad range 11:09
6 of options we discussed earlier. So one
7 skilled in the art would identify the
8 structure and knows how to do that. And
9 if there's a question, then you can use
10 a thresholding process to identify a 11:09
11 certain portion of the anatomy of
12 interest or the region of interest. And
13 then the patent goes on to describe how
14 one would then do the calculation.

15 BY MR. LoCASCIO: 11:09

16 Q. In the second full sentence, it says,
17 "With the boundaries of these regions
18 established" -- do you see that?

19 A. Yes.

20 Q. That has to be -- that has to happen 11:09
21 before you measure the intensity; right? You
22 have to establish the boundaries of the region?

23 A. Yes.

24 Q. How does the patent tell you to
25 establish the boundaries of that region? 11:09

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1 A. Well, the -- that's something that 11:09
2 someone that's skilled in the art would be able
3 to do. So the concept of fascicle
4 identification is one where, you know, we are
5 taught what the cross-section of a nerve looks 11:10
6 like with fascicles. And so the object is
7 presented as a cross-section of a tube with
8 maybe individual tubules within it. So that's
9 the region of interest.

10 And then one would look at that and 11:10
11 decide to a reasonable certainty where the
12 boundaries are either with the use of automated
13 or other thresholding processes that we
14 discussed.

15 Q. Here it says a thresholding process 11:10
16 is used. So in your view is it requiring you
17 to use a thresholding process, or that's giving
18 you an option to use a thresholding process?

19 MR. FENSTER: Objection. Vague,
20 legal conclusion. 11:10

21 THE WITNESS: I think it -- I think
22 it -- is it requiring you to use a
23 thresholding process? I think it just
24 describes what is happening. I don't
25 know that there is an implicit 11:11

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1 requirement there. It says that there's 11:11
2 a thresholding process to be used, and
3 you can choose the range of thresholding
4 processes, whether the ones we discussed
5 earlier. 11:11

6 BY MR. LoCASCIO:

7 Q. In your view could you also select it
8 manually?

9 MR. FENSTER: Objection. Vague.

10 BY MR. LoCASCIO: 11:11

11 Q. Based on your visual inspection of
12 those fascicles?

13 A. Well, again, I think that if you had
14 any question, you could resort to one of the
15 tools that we talked about including the 11:11
16 single-voxel lens that you scroll across the
17 image and say, "Okay, these are the range of
18 numbers that I'm interested in, and this is
19 where I'm going to measure the intensity." Or
20 you could put an oval within which you visually 11:11
21 thought were the boundaries based on your
22 training and experience and skill in the art.

23 Q. This section that you're pointing to,
24 column 28, doesn't tell you how to do that, but
25 in your view someone of skill in the art would 11:12

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1 figure it out. Fair?

11:12

2 A. Yeah.

3 MR. FENSTER: Objection. Vague.

4 THE WITNESS: I think it's a

5 combination of what this tells you how 11:12

6 to do that -- what this tells you to do,

7 and it makes suggestions based on an

8 assumption that someone with skill in

9 the art fills in the components. It

10 doesn't specify automated thresholding 11:12

11 versus manual versus oval window

12 versus -- but it says thresholding.

13 So I think someone skilled in the

14 art understands that, hey, you're going

15 to use a visual threshold and place a 11:12

16 region of interest tool in there, or

17 you're going to use a pixel thresholding

18 method and draw it in. So the range of

19 something -- of the things someone

20 skilled in the art would be able to 11:12

21 understand is being prescribed, if you

22 will, by this section.

23 BY MR. LoCASCIO:

24 Q. In your view if you select a

25 different region of interest from one of your 11:13

1 colleagues, will the conspicuity calculation be 11:13
2 different or the same?

3 MR. FENSTER: Objection. Vague,
4 incomplete hypothetical.

13 BY MR. LoCASCIO:

14 Q. What's the source for your belief
15 that there's a 5 to 10 percent range of
16 inter-operator variability?

17 A. Just the summary of experience. I
18 mean I've done -- I've written papers on
19 inter-observer variability of and other things.
20 I've read papers about it, inter-observer 11:13
21 variability for relatively simple tasks, even
22 ones that one would think would be extremely
23 reproducible. We know that there's a range of
24 inter- and intra-observer variability.

Obviously once one gets down to the 11:14

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1 THE VIDEOGRAPHER: This marks the 15:36
2 end of disk No. 3 and is the end of
3 today's deposition. The time is
4 3:36 p.m. We're now off the record.

5 (Time noted: 3:36 p.m.) 17:37

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14 MICHAEL BRANT-ZAWADZKI, M.D.

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20 (Notary Public)

21 My Commission expires: _____

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1 C E R T I F I C A T E

2 STATE OF CALIFORNIA:

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4 I, LISA MOSKOWITZ, CSR, RPR, CLR,
5 shorthand reporter, do hereby certify:

6 That the witness whose deposition is
7 hereinbefore set forth was duly sworn, and that
8 such deposition is a true record of the
9 testimony given by such witness.

10 I further certify that I am not related
11 to any of the parties to this action by blood
12 or marriage, and that I am in no way interested
13 in the outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this 19th day of August, 2011.

16

17

18 LISA MOSKOWITZ, CSR, RPR, CLR
19 Shorthand Reporter

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